IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WP(C).No. 7212 of 2007(H)

PETITIONER:

B.SURENDRA DAS, S/O.LATE BHANU
PANICKER, PROPRIETOR, HOTEL SREE VISAKH,
KOVALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.K.B.PRADEEP

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED
BY THE SECRETARY (TAXES), SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DEPUTY COMMISSIONER (APPEALS),
DEPARTMENT OF SALES TAX, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

3. THE SALES TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAXES,
NEYYATTINKARA.

4. THE INSPECTING ASST.COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
NEYYATTINKARA.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ASSESSMENT ORDER DATED 12.10.06 FOR THE YEAR 2003-04

EXT.P2 TRUE COPY OF THE ASSESSMENT ORDER DATED 12.10.06 FOR THE YEAR 2004-05.

EXT.P3 TRUE COPY OF THE APPEAL DATED 22.11.2006 AGAINST EXT.P1 ASSESSMENT ORDER

EXT.P4 TRUE COPY OF THE APPEAL DATED 25.11.2006 AGAINST EXT.P2 ASSESSMENT ORDER

EXT.P5 TRUE COPY OF THE STAY PETITION DATED 22.12.2006 SUBMITTED IN EXT.P3 APPEAL

EXT.P6 TRUE COPY OF THE STAY PETITION DATED 25.11.2006 SUBMITTED IN EXT.P4 APPEAL

EXT.P7 TRUE COPY OF THE APPLICATION DATED 22.12.2006 FOR EARLY HEARING OF EXT.P3 APPEAL

EXT.P8 TRUE COPY OF THE APPLICATION DATED 25.11.2006 FOR EARLY HEARING OF EXT.P4 APPEAL

EXT.P9 TRUE COPY OF THE DEMAND NOTICE DATED 19.2.2007 ISSUED BY THE 4TH RESPONDENT.

/ TRUE COPY /

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.7212 of 2007

Dated this the 3rd day of April, 2007.

JUDGMENT

The petitioner approached this Court feeling aggrieved by the delay from the part of the appellate authority to pass orders on the stay petitions filed by him. Pursuant to the interim order of this Court the appellate authority considered Exts.P5 and P6 stay petitions and passed Ext.P10 order. Petitioner was directed to pay 50% of the balance disputed tax and to furnish security for the remaining amount. The petitioner has amended the writ petition incorporating the challenge against Ext.P10 order. Learned counsel for the petitioner submitted that he has got a good case in the appeal and if those grounds raised in the appeal memorandum were taken into account absolute stay would have been granted. But without application of mind and mechanically the stay petitions were disposed of directing him to pay 50% of the amount.

2. Heard learned Government Pleader for the respondents also.

3. Going by the grounds raised in the appeal memorandum

I feel that most of them are in the realm of disputed questions of fact which have to be heard and decided by the appellate authority. Based on the materials on record it cannot be held that the interim order is arbitrary or perverse warranting interference with the same under Article 226 of the Constitution of India. The learned counsel for the petitioner in the alternative prayed for some time to remit the amount.

4. Petitioner may pay 25% of the balance tax on or before 16.4.2007 and the balance 25% on or before 30.4.2007. If payments are made as directed above the same shall be treated as made within time. Needless to say the payment will be subject to final orders in the appeal. If payments as directed above are made, further coercive steps under the revenue recovery proceedings will be kept in abeyance till the disposal of the appeal. The appellate authority will endeavour to pass final orders in STA Nos.436 and 487 of 2006 as expeditiously as possible.

Writ petition is disposed of as above.

K.BALAKRISHNAN NAIR,
Judge

vns.